Supreme Court
Oct 01/80 acc

12-541

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 293.

ISAAC W. LORD, PLAINTIFF IN ERROR,

vs.

THE GOODALL, NELSON AND PERKINS STEAMSHIP COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

FILED OCTOBER 13, 1877.

SUPREME COURT OF THE UNITED STATES.

No. 293.

ISAAC W. LORD, PLAINTIFF IN ERROR,

vs.

THE GOODALL, NELSON AND PERKINS STEAMSHIP COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

INDEX.

	Original.	Print.
Answer	16	5
Bill of exceptions to order transferring cause to United States circuit court	14	4
Bill of exceptions	48	15
Bond on writ of error	66	19
Complaint	1	1
Complaint, amendments to	9	3
Citation	72	21
Judgment	26	8
Opinion	28	9
Order changing venue	7	2
Stipulation that plaintiff may amend his complaint, &c	11	4
Stipulation as to complaint, answer, and transcript	60	18
Verdict	25	8
Writ of error	71	21

1 *Complaint.*

In the district court of the seventeenth judicial district of the State of California, in and for the county of Los Angeles.

ISAAC W. LORD, PLAINTIFF,
vs.
GOODALL, NELSOL AND PERKINS STEAMSHIP COMPANY, defendant.

The plaintiff above named complains of the defendant above named, and for cause of action alleges that said defendant is now, and ever since January 22nd, 1875, has been a corporation, duly incorporated and doing business as such corporation under the laws of the State of California and under the corporate name of "Goodall, Nelson & Perkins Steamship Company"; that said defendant was the owner of a certain steamship called Ventura from the said January 22nd, A. D. 1875, until after the happening of the loss on April 20th, A. D. 1875, hereinafter men-
2 tioned; that during all of the time that said defendant was the owner of said steamship Ventura, the said defendant used the same in carrying passengers and goods, wares and merchandise thereon between the ports of San Francisco and San Diego, in the State of California and intermediate ports and not elsewhere; that said defendant carried such passengers, goods, wares and merchandise for hire, and for whomsoever desired the same, and at certain designated rates as a common carrier.

That said steamship was not used nor did it run between any other ports or to any other place or places during any part of such time nor was it during any part of such time engaged in commerce, except wholly between different portions of said State of California, between the citizens thereof.

That on or about April 20th, A. D. 1875, said defendant, for hire, undertook, promised and agreed with D. Felsenheld to carry and transport from San Francisco to San Diego certain goods, wares and merchandise then owned by said D. Felsenheld, to wit: dry goods, fancy goods,
3 silks, and ladies' and children's boots and shoes, and such goods as are generally kept for sale in a first-class drygoods store.

That in pursuance of such undertaking, said defendant then and there placed said goods, wares and merchandise on said steamship at said San Francisco to be by it carried and transported to their said destination in compliance with said undertaking.

That thereafter and on or about the said April 20th, A. D. 1875, said defendant commenced a voyage from said San Francisco with said steamship on the Pacific Ocean for the purpose of transporting and carrying said goods, wares and merchandise to their said destination, in pursuance of said undertaking and agreement; that thereafter and during said voyage and on or about the said April 20th, A. D. 1875, the said goods, wares and merchandise were wholly ruined, lost and destroyed while they were in the possession of said defendant and on board said steamship Ventura; that neither the act of God nor of the public enemy
4 in any way contributed to or occasioned any part of said loss.

That plaintiff is informed and believes and on such information and belief avers that said goods, wares, and merchandise were so ruined, lost and destroyed by reason of the negligence of said defendant and the negligence and incompetence of its agents, servants and employés; that

1 *Complaint.*

In the district court of the seventeenth judicial district of the State of California, in and for the county of Los Angeles.

ISAAC W. LORD, PLAINTIFF,
vs.
GOODALL, NELSOL AND PERKINS STEAMSHIP COMPANY, defendant.

The plaintiff above named complains of the defendant above named, and for cause of action alleges that said defendant is now, and ever since January 22nd, 1875, has been a corporation, duly incorporated and doing business as such corporation under the laws of the State of California and under the corporate name of "Goodall, Nelson & Perkins Steamship Company"; that said defendant was the owner of a certain steamship called Ventura from the said January 22nd, A. D. 1875, until after the happening of the loss on April 20th, A. D. 1875, hereinafter men-
2 tioned; that during all of the time that said defendant was the owner of said steamship Ventura, the said defendant used the same in carrying passengers and goods, wares and merchandise thereon between the ports of San Francisco and San Diego, in the State of California and intermediate ports and not elsewhere; that said defendant carried such passengers, goods, wares and merchandise for hire, and for whomsoever desired the same, and at certain designated rates as a common carrier.

That said steamship was not used nor did it run between any other ports or to any other place or places during any part of such time nor was it during any part of such time engaged in commerce, except wholly between different portions of said State of California, between the citizens thereof.

That on or about April 20th, A. D. 1875, said defendant, for hire, undertook, promised and agreed with D. Felsenheld to carry and transport from San Francisco to San Diego certain goods, wares and merchandise then owned by said D. Felsenheld, to wit: dry goods, fancy goods,
3 silks, and ladies' and children's boots and shoes, and such goods as are generally kept for sale in a first-class drygoods store.

That in pursuance of such undertaking, said defendant then and there placed said goods, wares and merchandise on said steamship at said San Francisco to be by it carried and transported to their said destination in compliance with said undertaking.

That thereafter and on or about the said April 20th, A. D. 1875, said defendant commenced a voyage from said San Francisco with said steamship on the Pacific Ocean for the purpose of transporting and carrying said goods, wares and merchandise to their said destination, in pursuance of said undertaking and agreement; that thereafter and during said voyage and on or about the said April 20th, A. D. 1875, the said goods, wares and merchandise were wholly ruined, lost and destroyed while they were in the possession of said defendant and on board said steamship Ventura; that neither the act of God nor of the public enemy
4 in any way contributed to or occasioned any part of said loss.

That plaintiff is informed and believes and on such information and belief avers that said goods, wares, and merchandise were so ruined, lost and destroyed by reason of the negligence of said defendant and the negligence and incompetence of its agents, servants and employés; that

at the time of said loss and destruction of said goods, wares, and merchandise, they were the property of and owned by the said D. Felsenheld and were then and there reasonably worth the sum of $2,656.50; that no compensation or payment for the said loss of said goods, wares, or merchandise or any part thereof has ever been made by said defendant or any one in its behalf; that on January 19th, A. D. 1876, the said D. Felsenheld assigned to said plaintiff all his claim against said defendant for or on account of such loss.

Wherefore, said plaintiff prays judgment against said defendant for the sum of $2,656.50, with legal interest thereon from April 20th, 1875, until paid and all costs of suit.

5 (The remaining counts of the complaint are omitted from this transcript in accordance with stipulation of parties hereto.)

Wherefore all and singular the aforesaid premises being considered, the said plaintiff prays judgment against said defendant upon and by reason of the causes of action hereinbefore in this complaint stated for the sum of $66,789.45, with legal interest thereon at the rate of ten per cent. per annum from April 20th, 1875, until paid, and for all costs of suit.

J. W. STUMP,
Att'y for Pl'ff.

MOORE, LAINE & LEIB,
Of Counsel.

STATE OF CALIFORNIA,
County of Los Angeles, ss:

6 Isaac W. Lord, being first duly sworn, on his oath states that he is the principal in the foregoing entitled action; that he has heard read the foregoing (his) complaint, and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated on information or belief, and as to those matters he believes it to be true.

ISAAC W. LORD.

Subscribed and sworn to before me this 8th of April, 1876.
[SEAL.] J. J. WARNER,
Notary Public.

(Complaint endorsed:) Filed April 8th, 1876. A. W. Potts, clerk. In U. S. circuit court, Cal. Filed November 27th, 1876. L. S. B. Sawyer, clerk, by J. F. O'Beirne, dep'y cl'k.

7 In the district court of the 17th judicial district of California, in and for the county of Los Angeles.

TUESDAY, *May 23rd*, 1876—10 o'clock a. m.

Court met pursuant to adjournment. Present, Hon. Y. Sepulveda, judge; the sheriff, and the clerk.

Order changing venue.

ISAAC W. LORD
vs.
GOODALL, NELSON & PERKINS STEAMSHIP Company.

Motion for change of venue granted, and it is ordered that this case

be, and the same is hereby, transferred to the 15th district court of the State of California in and for the city and county of San Francisco.

SEPULVEDA, *Judge.*

STATE OF CALIFORNIA,
County of Los Angeles, ss:

I, A. W. Potts, county clerk, and ex-officio clerk of the district
8 court in and for said county, do hereby certify that the foregoing is a full, true, and correct copy of the order changing the venue in the above-entitled case as the same appears of record on the minutes of said court, and that I have carefully compared the same with the original.

Witness my hand and the seal of said court this 24th day of May, A. D. 1876.

[SEAL.]

A. W. POTTS, *Clerk,*
By C. W. GOULD, *Deputy.*

(Endorsed:) Filed in U. S. circuit court, Cal., November 27th, 1876. L. S. B. Sawyer, clerk, by J. F. O'Beirne, dep'y cl'k.

9 In the district court of the fifteenth judicial district of the State of California, in and for the county of San Francisco.

ISAAC W. LORD, PLAINTIFF,
vs.
GOODALL, NELSON & PERKINS STEAMSHIP Company.

And now comes the plaintiffs herein, and by leave of the court first had and obtained hereby amends his complaint herein and each count thereof, as follows, viz:

Amendments to complaint.

In each count or cause of action in said complaint contained, insert immediately before the prayer thereof the following words: "That said plaintiffs informed and believes, and such information and belief avers that at the time of said loss, said goods, wares, and merchandise were directed and being transported to a point within said State as their final destination, and not to any point or points elsewhere, and
10 were first started to their said destination and commence*ment* their said journey from a point within said State, and not from any point or points without said State."

Wherefore plaintiff pray' judgment as asked in his said complaint.

J. W. STUMP,
Att'y for Plff.

MOORE, LAINE & LEIB,
Of Counsel.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Isaac W. Lord, being first duly sworn, on his oath states that he has heard read the foregoing amendments to this complaint, and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated on his information or belief, and as to those matters he believes them to be true.

ISAAC W. LORD.

Sworn to and subscribed before me this 30th day of May, 1876.

A. W. POTTS,
County Clerk.

(Endorsed:) Filed June 26, 1876. Thos. H. Reynolds, clerk, by M. J. MacGrath, dep. cl'k. Filed in U. S. circuit court Cal., November 27th, 1876. L. S. B. Sawyer, clerk, by J. F. O'Beirne, dep'y cl'k.

11 *Stipulation that plaintiff may amend his complaint, etc.*

In the district court of the 15th judicial district of the State of California, in and for the city and county of San Francisco.

ISAAC W. LORD, PL'FF,
vs.
GOODALL, NELSON & PERKINS STEAMship Company.

It is hereby stipulated that plaintiff may amend his complaint and each count thereof by filing the following amendments thereto, as follows, viz:

In each count or cause of action in said complaint contained, insert immediately before the prayer thereof the following words: "That said plaintiff is informed and believes, and on such information and belief avers that at the time of said loss said goods, wares, and mer-
12 chandise were directed and being transported to a point within said State as their final destination and not to any point or points elsewhere, and were first started to their said destination and commenced their said journey from a point within said State and from any point or points without said State."

It is also stipulated that the defendant may have thirty days from this date to plead to such complaint as thus amended, or that if it fail to plead thereto within such time, then the demurrer on file shall stand as a demurrer to the complaint as thus amended.

Dated June 10th, 1876.

J. W. STUMP,
Att'y for Plaintiff.

MOORE, LAINE & LEIB,
Of Counsel.

McALLISTER & BERGIN,
Att'ys for Defendant.

13 (Endorsed:) Filed June 26, 1876. Thos. H. Reynolds, clerk, by W. J. McGrath, dep. cl'k. In U. S. circuit court, Cala. Filed November 27th, 1876. L. S. B. Sawyer, clerk, by J. F. O'Beirne, dep'y cl'k.

14 *Bill of exceptions to order transferring cause to circuit court.*

In the district court of the 15th judicial district of the State of California, in and for the city and county of San Francisco.

ISAAC LORD, PLAINTIFF,
vs.
GOODALL, NELSON & PERKINS STEAMSHIP CO., defendant.

Be it remembered that on September 5th, A. D. 1876, the defendant

herein applied to this court for an order removing this cause to the United States circuit court for the district of California, when the plaintiff herein appeared to said application and objected to the granting thereof, on the ground that said defendant was not entitled to said removal before the filing of defendant's answer therein; which objections were overruled and said application granted, and such cause ordered to be removed to said circuit court; to which ruling and order said plaintiff, by his counsel, then and there excepted, and now, at the time of such ruling, order, and exceptions here in open court tenders this as his bill of ex-
15 ceptions herein, and prays that the same may be allowed, signed, sealed, and made a part of the record herein; which is done accordingly.

Dated September 5th, 1876.

[L. S.] SAM'L H. DWINELLE,
District Judge.

(Endorsed:) Filed Sept. 5, 1876. Thos. H. Reynolds, clerk, by J. W. Breckendrige, dep. cl'k. Filed in U. S. circuit court Cal., November 27, 1876. L. S. B. Sawyer, clerk, by J. F. O'Beirne, dep'y cl'k.

16 *Answer.*

In the circuit court of the United States, ninth judicial circuit, in and for the district of California.

ISAAC W. LORD, PLAINTIFF,
vs.
GOODALL, NELSON AND PERKINS STEAMSHIP COMPANY, defendant.

The answer of the Goodall, Nelson and Perkins Steamship Company, defendant in the above entitled action, to the complaint of Isaac W. Lord, the plaintiff therein, alleges as follows:

1st. For answer to the first count of, or the first cause of action alleged in said complaint, defendant denies that said steamship Ventura was on *on* the 20th day of April, 1875, or from the 22nd day of January, 1875, until the loss of said steamship on the 20th April, 1875, or at any time, engaged in commerce between different portions of the State of California. Defendant denies that said steamship was on the
17 20th day of April, 1875, or from the 22d day of January, 1875, until her loss, on the 20th day of April, 1875, or at any time, engaged wholly in commerce between citizens of the State of California; on the contrary, defendant avers that said steamship, during the 20th April, 1875, and at the time of her loss on said 20th April, 1875, and at all times between the 22d January, 1875, until her said loss on the 20th April, 1875, was exclusively engaged in ocean navigation and in ocean commerce, and in conveying and transporting from San Francisco, California, merchandise and passengers bound to San Diego, California, and to Arizona and Mexico, by the way of San Diego, California, and in conveying and transporting from San Diego, California, merchandise and passengers bound to San Francisco, and to Oregon, and to British Columbia, and to the Atlantic States of the United States, by the way of San Francisco.

Defendant further avers that said steamship, during the 20th April, 1875, and at the time of her loss on said 20th April, 1875, and at all times between the 22nd January, 1875, until her said loss on the 20th April,

1875, was engaged in conveying and transporting from San Fran-
18 cisco, California, to San Diego, California, and to intermediate ports, and from San Diego, California, to San Francisco, California, and to intermediate ports, citizens of the State of California, and citizens of various States of the United States other than said State of California, and aliens.

Defendant denies that the goods or wares or merchandise mentioned in said first count of the complaint, or in first cause of action alleged in the complaint, or any of such goods, or any of such wares, or any of such merchandise were ruined, or lost, or destroyed, or injured by reason of the negligence of the defendant, or by reason of the negligence or the incompetence of the agents, or of any agent, or of the servants, or of any servant, or of the employees, or of any employee of said defendant.

Defendant avers that as to the value or worth of the goods, wares, and merchandise alleged in the first count of the complaint, or in the first cause of action of the complaint, to have been the property of or owned by D. Felsenheld, defendant has no information or belief sufficient to enable it to answer any allegation of the complaint con-
19 cerning such value or worth; and, therefore, defendant denies that the said goods, wares, and merchandise of said D. Felsenheld were reasonably, or at all, worth the sum of two thousand six hundred and fifty-six $\frac{50}{100}$ dollars, or any other sum whatever.

Defendant avers that as to the assignment alleged in the complaint by said D. Felsenheld to the plaintiff of all his claims against said defendant, for or on account of the loss alleged in the first count of the complaint, or in the first cause of action of the complaint, defendant has no information or belief sufficient to enable it to answer any allegation of the complaint concerning such assignment, and therefore defendant denies the making or existence of any such assignment.

Defendant denies that the goods or wares or merchandise mentione in said first count of the complaint, or in the first cause of action a leged in the complaint, or any of such goods, or any of such wares, o any of such merchandise were not lost by the act of God, and the defendant also denies that the act of God did not contribute to, or did not occasion the loss of said goods, wares, and merchandise, and every of them.

20 Defendant further avers that last mentioned goods, wares, and merchandise of said D. Felsenheld were shipped at San Francisco, California, to San Diego, California, by said D. Felsenheld, through his agent at San Francisco, California, on board said steamship Ventura, said vessel being then and there bound from San Francisco to San Diego and intermediate ports, under and in pursuance of a special written contract made between the said D. Felsenheld and this defendant, and that by the terms of said special written contract the said steamship Ventura, and her owner, this defendant, was exempted from all liability or responsibility for any loss or damage happening to said goods, wares, and merchandise, or to any of them, by dangers of fire and navigation, or any other accident or danger of the seas, rivers, or steam navigation of whatever kind or nature soever.

That the loss of last mentioned goods, wares, and merchandise of said D. Felsenheld alleged in said first count of the complaint, or in the first cause of action of the complaint, happened and was
21 caused solely and exclusively by the dangers of navigation and of the seas, and not by any carelessness, or negligence, or mis-

conduct, or default of defendant, or of its servants, or agents, or employees, or of any of them.

That said steamship Ventura, at the time of her departure from said San Francisco on said voyage, was tight, staunch, strong, and seaworthy, with good and efficient machinery, properly provisioned, equipped, provided, fitted, officered, and manned for said voyage, and under the command of a skillful, careful, and experienced captain.

And for a further, separate, and distinct defence to the first count of, or to the first cause of action alleged in said complaint, defendant avers that the Senate and House of Representatives of the United States of America in Congress assembled, by a statute entitled "An act to revise and consolidate the statutes of the United States in force on the first day of December, anno Domini one thousand eight hundred and seventy-three," enacted that "The liability of the owner of any vessel for any embezzlement, loss, or destruction, by any person, of any property, goods, or merchandise shipped or put on board of such ves-
22 sel, or for any loss, damage, or injury by collision, or for any act, matter or thing lost, damage or forfeiture done, occasioned, or incurred without the privity or knowledge of such owner or owners shall in no case exceed the amount of value of the interest of such owner in such vessel and her freight then pending."

Defendant avers that the goods, wares and merchandise of said D. Felsenheld mentioned in said first count of the complaint, or in the first cause of action alleged in said complaint, were lost on the 20th day of April, 1875, by the wreck and total loss of said steamship Ventura on the ocean, by a peril of the sea and the dangers of navigation, said steamship being then and there an ocean steamship, and then and there exclusively employed in ocean navigation; and that said loss and wreck were without the privity or knowledge of this defendant, who was
23 then and there the sole and exclusive owner of said steamship; and that at the time of said loss and wreck there was no freight pending, and that the whole freight for the aforesaid intended voyage of said steamship, at the time of her said wreck, and the said steamship herself were wholly lost to this defendant, the then sole owner of said steamship and of said freight; that defendant was the sole and exclusive owner of said steamship from the 22d day of January, 1875, until her said loss on the 20th April, 1875.

(The remaining answers omitted, pursuant to stipulation of counsel to that effect.)

Wherefore this defendant prays to be hence dismissed with judgment for its costs.

McALLISTERS & BERGIN,
Att'ys for Defendant.

24 STATE OF CALIFORNIA,
City and County of San Francisco, ss :

Charles Goodall, having been duly sworn, says that he is one of the officers of the corporation defendant herein, to wit, the president thereof, in the above entitled action; that he has read the foregoing answer, and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters that he believes it to be true.

CHAS. GOODALL.

Subscribed and sworn to before me this 7th day of December, A. D. 1876.

JOS. F. O'BEIRNE,
Com'r of U. S. Circuit Court, Cala.

(Endorsed:) Filed 7th Dec'r, 1876. L. S. B. Sawyer, clerk, by J. F. O'Beirne, dep'y cl'k.

25 *Verdict.*

In the circuit court of the United States, north judicial circuit, district of California.

ISAAC W. LORD
vs.
GOODALL, NELSON & PERKINS STEAMship Company.

We, the jury, find for the defendant.

GEO. T. BROMLEY,
Foreman.

(Endorsed:) Filed 31st August, 1877. L. S. B. Sawyer, clerk, by J. F. O'Beirne, dep. cl'k.

26 *Judgment.*

In the circuit court of the United States, of the ninth judicial circuit in and for the district of California.

ISAAC W. LORD
vs.
THE GOODALL, NELSON AND PERKINS STEAMship Company. } No. 1694.

This cause having come on regularly for trial on the 23rd day of August, A. D. 1877, being a day in the July, A. D. 1877, term of said court before the court and a jury of twelve men duly empaneled, S. F. Leib and Thomas Laine, esqs., appearing on behalf of plaintiff, and Hall McAllister and Milton Andros, esqs., on behalf of defendant, and the trial having been proceeded with on the 24th, 27th, 28th, 29th, 30th, and 31st days of said August, and witnesses on the part of the plaintiff and of the defendant having been sworn and examined, and the evidence being closed, the cause having after argument of counsel and the instructions of the court been submitted to the jury, and the jury having subsequently rendered the following verdict: "We, the jury, find for the
27 defendant"; and the court having ordered that judgment be entered herein in accordance with said verdict;

Now therefore, by virtue of the law and by reason of the premises, it is considered by the court that the plaintiff take nothing by this action, that the defendant go hereof without day, and that the Goodall, Nelson and Perkins Steamship Company, the said defendant, do have and recover of and from Isaac W. Lord, the said plaintiff, its costs in this behalf expended taxed at four hundred eighty-eight $\frac{25}{100}$ dollars.

Judgment entered the 31st day of August, 1877.

L. S. B. SAWYER,
Clerk.

U. S. circuit court, ninth judicial circuit, district of California.

ISAAC W. LORD
vs.
THE GOODALL, NELSON & PERKINS S. S. Co.

1. *Inter-State commerce.*—Where a vessel running upon the ocean between ports of the same States carries merchandise between such ports, destined to points in other or foreign States, on through bills of lading, or carries passengers between such ports, destined to points in other States or foreign countries, upon through tickets, she is engaged in inter-State and foreign commerce, and, as an instrument of such commerce, is subject to the regulating power of Congress, and the provisions of section 4283 of the Revised Statutes, limiting the liability of owners, are applicable to such vessel.

2. *Domestic commerce on vessel engaged in inter-State commerce.*—Where such a vessel also carries merchandise from one port to another port of destination in the same State, the provisions of section 4283 of
29 the Revised Statutes, limiting the liability of owners of vessels for losses occurring without their privity or knowledge, are applicable to such merchandise as well as to merchandise destined to other States or foreign countries.

3. *Same.*—A party using, for the transportation of his goods, an instrument of commerce which is subject to the regulating power of Congress, must use it subject to all the limitations imposed upon its use by Congress.

4. *Privity or knowledge of owner.*—The word "privity" of the owner, used in section 4283 of the Revised Statutes, means some fault or neglect in which the owner of the vessel personally participates; and "knowledge," as used, means some personal cognizance, or means of knowledge, of which he is bound to avail himself of a contemplated loss, or of a condition of things likely to produce or contribute to a loss without adopting appropriate means to prevent it.

5. *Corporation as owners.*—Where the owner is a corporation the privity or knowledge of the managing officers of the corporation is privity or knowledge on the part of the corporation itself.

30 6. *Care of owner in fitting out ship.*—The owner is bound to exercise the utmost care in the selection of a competent master and crew, and in providing a vessel in all respects seaworthy; and if, by reason of any neglect or fault in these particulars, a loss occurs, the owner is in privity within the meaning of the statute.

7. *Same.*—If the owner exercises due care in the selection of the master and crew and in providing a seaworthy vessel, and a loss afterward occurs, without his privity or knowledge, through the negligence of the master or crew, or from some secret defect in the ship or its equipments, which could not have been discovered or avoided by the exercise of proper care on his part, the owner's liability is within the limitation of the statute.

8. *Compasses, seaworthiness.*—In order to be seaworthy, a ship must be furnished with suitable compasses.

9. *Causes arising after leaving port.*—Where a vessel is properly officered and manned and in all respects seaworthy when she leaves port, and a loss occurs from the subsequent negligence of the master
31 or crew, or from causes arising during the voyage, without the

privity or knowledge of the owner, the owner's liability is within the limitations prescribed by the statute.

10. *Deviating compasses.*—Where the ship is provided with several correct compasses, and one compass, from any cause, deviates, if the master, by the exercise of ordinary care and skill, can discover the deviation and correct the deviating compass by the others, and thus be able to steer the proper courses, the ship is, in this respect, seaworthy.

SAWYER, circuit judge:

The steamship Ventura, of about 800 tons burden, from January 22, 1875, to April 20, 1876, was owned by defendant, a corporation formed under the laws of the State of California, and was running regularly upon the Pacific Ocean as a passenger and freight ship between the ports of San Francisco and San Diego, touching at the intermediate ports, the ports between which she was plying being some 500 miles apart, and, together with all the intermediate ports, situated within the State of California.

32 Goods upon through bills of lading from cities in the eastern States were sent across the continent by rail to San Francisco, and at the latter port transferred to the steamer Ventura, and thence carried on said steamer to San Diego, Los Angeles, and other intermediate ports, and vice versa. So, also, passengers for Texas, Arizona, and New Mexico purchased through tickets of the company from San Francisco, going by the steamer Ventura, to San Diego; thence by stage over a line deflecting into Mexico and returning into California through the southern part of the latter State, to and through Arizona and New Mexico to Texas.

Merchandise was also shipped on board said steamer from southern ports of California for ports in Oregon and British Columbia. On the night of April 20, 1876, while on a voyage from San Francisco to San Diego the said steamer ran ashore at Point Sur in a dense fog and was wrecked, there being a total loss of ship and cargo. This action is brought against the owner to recover the aggregate value of goods, amounting to some sixty thousand dollars, shipped by various

33 parties on said steamer at San Francisco for San Diego and various intermediate ports, the respective owners having assigned their several rights of action to the plaintiff. The ship at the time of her loss was furnished with five compasses—one spirit and four mariner's compasses—of the usual construction. The spirit compass and one other were in the pilot-house. One compass was on the deck, in the after part of the ship, and farthest removed from the machinery, boilers, etc., and this, the testimony indicates, was regarded as the standard compass. One was in the mate's room and the other easily accessible to the master. The testimony showed that the ship was usually steered by the spirit compass, as it was less disturbed by a rough sea. The officers of the corporation defendant testified that they procured the best compasses to be had, and that they had no knowledge of or any reason to suspect any defect in any of the compasses. A witness who went on the steamer as mate seven months before, testified that at the time the spirit compass deviated from half to three-fourths of a point, and that the deviation was constant. Captain Harloe, who after-

34 ward made two voyages in the steamer as master and the voyages immediately preceding the one in which she was lost, testified that the compasses were correct, and that he so informed Captain Fake, who commanded at the time of the loss. Captain Fake took charge of the vessel four days before her departure. He testified that he examined

the compasses to see if they were correct, and found them so; that he tested them as he went out of the heads, and they appeared correct then, and were correct on the several courses (some three or four) run before he got into the fog, but that after the vessel struck he looked at the spirit compass and found that it deviated about half a point. This was the first deviation he had noticed.

The mate on the voyage also corroborates the master as to his examination and testing of the compasses; and testified that they carried the vessel on the correct course through the several courses run before they got into the fog, and he did not notice any deviation afterward. There was nothing to show that any of the compasses other than the spirit compass were incorrect; but, on the contrary, the testimony was that they were correct. Since the time when the spirit compass
35 was said to have deviated, seven months before, there had been some change in the location of the boiler and iron-works, removing them considerably further from the location of the compass. The testimony also was that all compasses are more or less inaccurate and are liable to deviate in some degree; that one object in having several compasses is to enable the master to discover and correct any deviation that may occur, and that when there are several good compasses on board, a competent master by the exercise of ordinary care and skill can correct any deviation that may chance to occur. There was testimony as to variable strong currents in the region and before arriving at the location of the wreck.

The defence is, that the accident occurred without the "privity or knowledge" of the owner of the steamer, and there being a total loss, that the defendant is exonerated from further liability under section 4283 of the Revised Statutes, which reads as follows:

"The liability of the owner of any vessel for any embezzlement, loss, or destruction by any person of any property, goods, or merchandise shipped or put on board of such vessel, or for any loss, damage,
36 or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture done, occasioned, or incurred without the privity or knowledge of such owner or owners, shall in no case exceed the amount or value of the interest of such owner in such vessel and her freight then pending."

On the part of the plaintiff it was insisted, firstly, that as to the goods in question, the steamer was strictly engaged in domestic commerce within the State of California, which is wholly under the control of the State, and not subject to regulation by Congress under the clause of the National Constitution conferring power to regulate commerce with foreign nations, between the States, and with the Indian tribes, and, therefore, that the statute invoked can have no application; secondly, if wrong in this, that the defendant, as an implied term of its contract, undertook at all events to furnish a seaworthy vessel, or, in other words, warranted the seaworthiness of the vessel, and that if, from any defect, whether unknown or not, a loss occurred, the owner is responsible for the entire loss, even though he be without fault. It was further claimed that the steamer in this instance was not supplied with compasses
37 suited to the navigation in which she was engaged; that in this particular she was unseaworthy, and that this defect caused or contributed to the loss.

Upon the facts as stated there can be no doubt, since the decision in the Daniel Ball (10 Wall., 565) that the steamer Ventura was engaged in both interstate and foreign commerce, and, as an instrument of such commerce, was subject to the regulating power of Congress, not-

withstanding the fact that the particular goods in question were passing only from port to port within the State of California and constituted a portion of its domestic commerce. In the case cited, the Supreme Court, in relation to the vessel then in question, says:

"So far as she was employed in transporting goods destined for other States, or goods brought from without the limits of Michigan and destined to places within the State, she was engaged in commerce between the States; and however limited that commerce may have been, she was, so far as it went, subject to the legislation of Congress; she was employed as an instrument of that commerce, for whenever a commodity has begun to move as an article of trade from one State to another, commerce in that commodity between the States has commenced.
38 The fact that several different and independent agencies are employed in transporting the commodity—some acting entirely in one State, and some acting through two or more States—does in no respect affect the character of the transaction; to the extent in which each agency acts in that transportation it is subject to the regulation of Congress.

The vessel, then, was an instrument of interstate and foreign commerce, and, as such, was within the regulating power of Congress; but does this power extend to a limitation of the liability of the owner as to those goods shipped upon her from one port to another in the State, and constituting a part of the domestic commerce of such State? This seems to be a new question, as I find no case in which it has been decided, or even discussed.

In order to provide better security for the lives of passengers and the safety of merchandise shipped, Congress, in 1838, passed an act requiring all vessels propelled in whole or in part by steam to be inspected, and forbidding their employment in commerce without first being licensed upon such inspection, and without complying
39 with many prescribed conditions as to the manning and equipment of the vessel. It provided that a sufficient number of skillful engineers should be employed; also, for safety-valves, the number and character of boats to be carried; iron tiller-rods, hose, signal lights, etc.

In 1852 an amendatory act was passed adding many other conditions, such as provided for pumps, safety-plugs, life-preservers, means of access to decks, limiting amount of steam to be used and number of passengers to be carried; excluding carriage of dangerous goods; requiring license of engineers, masters, pilots; prescribing kind and quality of boiler-iron to be used, etc. These and many other onerous conditions are imposed upon owners—some as conditions precedent to the use of the vessel at all, and the observance of the others enforced by forfeitures, fines, liabilities, and several penalties, civil and criminal. All these precautions are taken for the safety and better security of life and of property embarked in commerce. As a counterpoise in some degree to these severe and onerous conditions, and as an encouragement to citizens to build ships and engage in commerce, some limita-
40 tions, also, were subsequently placed on the common-law liabilities of ship-owners by the provisions of the statute in question, first adopted in 1851, and which, with the other provisions cited, have been carried into the present Revised Statutes. One means of security is to a certain extent substituted for the other, and it cannot reasonably be doubted, I think, that, upon the whole, the security afforded by the provisions of the statute, if properly enforced, notwithstanding the limitation of the personal liability of owners provided for, is far greater than it

would be under the full common-law liability of owners without the security provided by Congress. However this may be, a vessel engaged in interstate or foreign commerce, as an instrument of such commerce, is brought within the regulating power of Congress; and Congress has seen fit to make these provisions, together with the changes in the responsibilities and liabilities of the owners of such vessels. Congress deals with the vessel as an instrument of commerce, and the rights and obligations of the owners as related to such instrument. The vessel, being engaged in an interstate or foreign commerce, must conform to the regulations prescribed, and any party using it for the purposes
41 of domestic commerce enjoys all the benefits afforded by these regulations, for they inhere in the vessel, and cannot be separated from it. If a party avails himself of these benefits by the use of the vessel, he must also suffer the inconveniences incident to such use. He must take the vessel as he finds it, with all the inconveniences imposed, as well as the additional security afforded. It would be impracticable for two sovereignties to regulate the same instrument used at the same time in different branches of commerce. If the State should attempt to regulate the vessel as to State commerce, and the National Government as to interstate or foreign commerce, it is easy to see that their regulations might be wholly inconsistent. The regulation as to all must necessarily fall to that sovereignty which is supreme or paramount as to any part, and having control of the instrument employed; and all parties availing themselves of the use of the instrument must take it as they find it, with all the responsibilities and exemptions provided by the controlling power. The power to prescribe the conditions upon which the vessel shall be employed as an instrument of interstate or foreign
42 commerce necessarily carries with it the power to modify the rights of those who use it, as well those who at the same time make use of it for the purpose of domestic commerce as those who employ it in interstate or foreign commerce. The steamer Ventura being engaged in interstate and foreign as well as domestic commerce, the provisions of section 4283 of the Revised Statutes, limiting the liabilities of owners of vessels, are applicable to her, and the limitations apply to the goods in question, as well as to goods destined to ports or places beyond the State of California.

The next question is, what is meant by a loss "occasioned or incurred without the privity or knowledge of such owner"? These words, as related to this subject, seem to have been first used in the statute of George II, in 1734, where there was a restriction provided as to the liability of the owner in certain specified cases happening without the knowledge or privity of such owner. (English Admiralty Statutes, 167.) The restriction was extended to other cases by statute 26, George III, 1786. (Ib., 448.) The restriction was again extended to other cases by the statute of 53 George III, 1813. And in the statutes of 18 and
43 19 Victoria the words "privity or knowledge" were changed to "actual fault or privity." (Macl., Law of Merchant Shipping, 704.) These statutes seem to form the basis of our own; and an examination of these statutes, with their preamble, will afford no little aid in arriving at a proper construction. The policy of the act is well stated in Norwich Company vs. Wright (13 Wal., 121) and Moore vs. American Transportation Co. (24 How., 39). It is quite apparent that it was intended to exonerate owners from liability beyond the value of the ship and freight pending for losses resulting from many causes for which they were before liable, and, among them, from mere negligence or care-

lessness of the master or crew of the vessel—from mere general negligence of employés.

So much is already determined by the Supreme Court in Walker vs. The Transportation Company, wherein the court says, "We are therefore of opinion that in reference to fires occurring on that class of vessels to which the statute applies, the owner is not liable for the misconduct of the officers and mariners of the vessels in which he does not participate personally." Privies, as defined by Bouvier, are "persons who
44 are partakers or have an interest in any action or thing, or any relation to another." One of Webster's definitions of privity is, "private knowledge; joint knowledge with another of a private concern; cognizance, implying consent or concurrence." And one definition of privy, as an adjective, is, "admitted to the participation of knowledge with another of a secret transaction; secretly cognizant; privately knowing." As a noun, "a partaker," etc.

As used in the statute, the meaning of the words "privity or knowledge" evidently is a personal participation of the owner in some fault or act of negligence, causing or contributing to the loss, or some personal knowledge, or means of knowledge, of which he is bound to avail himself, of a contemplated loss, or of a condition of things likely to produce or contribute to the loss, without adopting appropriate means to prevent it. There must be some personal concurrence, or some fault or negligence on the part of the owner himself, or in which he personally participates, to constitute such privity, within the meaning of the act, as will exclude him from the benefit of its provisions. (3 Wal., 153; 113 Mass., 499.) It is the duty of the owner, however, to provide the vessel with a competent master and a competent crew, and to see that
45 the ship, when she sails, is in all respects seaworthy. He is bound to exercise the utmost care in these particulars, such care as the most prudent and careful men exercise in their own matters under similar circumstances; and if, by reason of any fault or neglect in these particulars, a loss occurs, it is with his privity within the meaning of the act. But the owner under this act is not an insurer. If he exercises due care in the selection of the master and crew, and a loss afterward occurs from their negligence, without any knowledge or other act or concurrence on his part, he is exonerated by the statute from liability beyon' the value of his interest in the ship and the freight pending. So, also, if the owner has exercised all proper care in making his ship seaworthy, and yet some secret defect exists which could not be discovered by the exercise of such due care, and the loss occurs in consequence thereof, without any further knowledge or participation on his part, he is in like manner exonerated, for it cannot be with his "privity or knowledge," within the meaning of the act or in just sense, and the provision is that "the liability of the owner * * * for any act, matter or
46 thing, loss, etc., * * * occasioned without the privity or knowledge, shall in no case exceed the amount or value of the interest of such owner in such vessel and her freight then pending." This language is broad, and takes away the quality of warranty implied by the common law against all losses except by the act of God and the public enemy.

When the owner is a corporation, the privity or knowledge of the managing officers of the corporation must be regarded as the privity and knowledge of the corporation itself. (113 Mass., 500; 21 How., 202.) Where a vessel is properly officered, manned, and equipped, so as to render her seaworthy when she leaves port, any loss resulting from causes arising during the voyage after she leaves port, without the

privity or knowledge of the owner, will be within the protection of the statute. To render a vessel seaworthy she must be furnished with compasses suitable for the voyage. Where there are several correct compasses, and one compass, from any cause, deviates, if a competent master, by the exercise of ordinary care and skill, can discover the deviation and correct the deviating compass by comparison with the others, and be thus enable' to steer the proper courses, the ship in this respect
47 is seaworthy. All compasses appear to be liable to deviate more or less, and it is in part to enable masters to make this correction that prudent owners provide the vessels with several. *

S. F. Leib and Tho's H. Laine for plaintiff.
Hall McAllister and Milton Andros for defendant.
August 28, 1877.

(Endorsed:) Read in open court August 28th, 1877. L. S. B. Sawyer, clerk, by J. F. O'Beirne, dep. cl'k.

48 *Bill of exceptions.*

In the circuit court of the United States in and for the district of California.

ISAAC W. LORD, PLAINTIFF,
vs.
GOODALL, NELSON AND PERKINS STEAMSHIP COMPANY, defendant.

Be it remembered that on this 21st day of August, A. D. 1877, this cause came on regularly for trial, before a jury duly impanelled and sworn; J. W. Stump, esq., and Messrs. Moore, Laine & Leib appearing as attorneys for plaintiff, and Messrs. McAllister & Bergin and Milton Andros, esq., appearing as attorneys for defendant.

Upon the trial of such action, it was proven and not disputed that the steamship Ventura was at the time of her loss, as hereinafter
49 mentioned, and for a long time theretofore, and as long as defendant owned her, had been running between and to the ports of San Francisco, State of California, and San Diego, State of California, and intermediate ports in such State, and not elsewhere; that in making such trips she ran a distance of four hundred and eighty miles upon the ocean; that during all of such time she always carried some goods, wares, merchandise and passengers, which were on a continuous journey from points in some other State to points in California, and from points in California to points in some other States.

That during all such time and during the month of April, 1875, until she was lost, as hereinafter stated, said steamship Ventura was a common carrier of passengers and merchandise between San Francisco and
50 San Diego, California, and intermediate ports, and as such was running in connection with and in continuation of the overland railroad from the Atlantic States to San Francisco, California, and so that goods were shipped in New York, in the State of New York, and in Chicago, in the State of Illinois, and in other Atlantic cities, destined and marked for Los Angeles and Santa Barbara and San Diego, California, under through bills of lading, and were transported under such through bills of lading in their original packages from said New York, from said Chicago, and from other Atlantic cities to Los Angeles and Santa Barbara and San Diego, respectively, by said overland railroad, and by the steamship line of the Goodall, Nelson & Perkins Steamship Company, and that during all the times herein mentioned said steamer Ventura belonged to and was exclusively running in last men-

51 tioned steamship line; and so that goods were shipped in Los Angeles and Santa Barbara and San Diego, California, destined and marked for said New York, and for said Chicago, and for other Atlantic cities under through bills of lading, and were transported under such through bills of lading in their original packages from said Los Angeles, and said Santa Barbara, and said San Diego, respectively, to said New York, and to said Chicago, and to other Atlantic cities, respectively, by the steamship line of the Goodall, Nelson and Perkins Steamship Company, and by said steamship Ventura, and by said overland railroad.

That during all the time herein mentioned said steamship Ventura was a common carrier of passengers and merchandise between San Francisco and San Diego, California, and intermediate ports, and as such was running in connection with and in continuation of a steam-
52 ship line between San Francisco, California, and Victoria, Vancouver's Island, and so that goods were shipped in Los Angeles and Santa Barbara and San Diego, California, destined and marked for Victoria, Vancouver's Island, under through bills of lading, and were transported under such through bills of lading in their original packages from said Los Angeles, Santa Barbara and San Diego, California, to said Victoria by the steamers of said Goodall, Nelson & Perkins Steamship Company, of which the steamship Ventura was then and there one, and by said steamship line running between San Francisco and said Victoria.

That during all the times herein mentioned defendant had such arrangements with other lines of travel and transportation, that tickets and bills of lading were issued by such other lines for passengers and goods to be carried on that portion of defendant's line on which
53 such steamship was running and defendant's, from different points on such portion of its line, issued like tickets and bills of lading for passengers and goods to be carried on such other lines.

That on April 20th, 1875, such steamship sailed from the port of San Francisco to the port of San Diego and intermediate ports in the State of California, having on board a considerable cargo; that all the goods, wares, and merchandise, for the loss of which this action is brought, and then amounting to over forty thousand dollars in value (not embracing the goods of A. J. Bradfield, which amounted to $1,560), were being carried by defendant in its said steamship as a common carrier, on a journey which first commenced at the port of San Francisco, and was to finally end at the port of San Diego and intermediate ports, the shippers of which were retail merchants in San Diego and intermediate ports, who had purchased the same for their business from
54 wholesale houses in San Francisco.

That as to the said goods of A. J. Bradfield, the evidence was as follows: Bradfield, a short time previous to April 20th, 1875, had passed through San Francisco from the State of Indiana to the city of Los Angeles, having reached San Francisco by the overland railroad; that while passing through San Francisco he gave a friend, to whom he had a letter of introduction, bills of lading of his goods above mentioned, showing them to have been shipped from New York by sea around Cape Horn to San Francisco, and requested his friend that when the goods arrived at San Franciscoto have them shipped to Los Angeles by defendant's line; that his friend complied with such request, and had them upon their arrival in San Francisco, and while in their original packages, shipped on board the said steamship Ventura for
55 Los Angeles on the voyage mentioned.

The said steamship Ventura, on every voyage from San Francisco to San Diego and other intermediate ports, carried merchandise marked and destined for Los Angeles or Santa Barbara or San Diego, California, which were in process of transportation from other States than California to said Los Angeles, Santa Barbara, and San Diego, respectively, and which had reached San Francisco in the course of such transportation by the overland railroad; that the steamship Ventura, while pursuing her said voyage under the command of a master employed by defendant for that purpose, on the said April 20th, 1875, at 15 minutes after 8 o'clock p. m. of that day, while running under a full head of steam, at 10 knots an hour, in thick fog on a smooth sea, ran *from* Point Sur, on the coast of California, a few miles below Monterey Bay,
56 whereby such steamship and all the cargo aforesaid was totally lost; that the claims of the different shippers for the losses of such goods, for which this action was brought, were assigned and transferred to the plaintiff before the commencement of this suit.

The defendant contended that if the jury believed that the loss happened solely by reason of the negligence of the master of said steamship on such voyage, and that there was no negligence or fault of kind on the part of the defendant in selecting or employing said master, that it was not responsible for any such loss, but was exonerated from liability under section 4283 of the Revised Statutes of the United States, and requested the court to instruct the jury accordingly.

The plaintiff contended that such statute had no application
57 in this case to such losses as were for goods, which when lost were being transported on a journey which first commenced in the State of California and was to have ended in the same State, without extending to any other State or country or Indian tribe, and requested the court to instruct the jury as follows, viz:

The Revised Statutes of the United States, pleaded by the defendant and relied on by it on the trial, afford no defense to this action as to the losses sued for, other than the loss of A. J. Bradfield.

But the court refused to give such instructions; to which refusal the plaintiff, through his attorneys, then and there duly excepted.

The court thereupon on the same day, to wit, on August 31st, A. D. 1877, instructed the jury that if the jury believed that the said
58 losses occurred solely by reason of the negligence of the master of said ship, and without the privity or knowledge or neglect of said defendant, that said section 4283 of said Revised Statutes fully exonerated the defendant from liability for any of such losses, notwithstanding the goods so lost were being transported on a journey when lost, the final termini of which were different points in the State of California.

To which instruction the plaintiff, through his attorneys, then and there duly excepted.

The jury then retired, and thereafter brought in a verdict for defendant.

And the plaintiff hereby tenders this as his bill of exceptions herein, and prays that the same may be allowed, signed, sealed, and made a part of the record herein, which is accordingly done.

59 The foregoing bill of exceptions is hereby allowed as correct and true, the same having been properly and in due season presented for settlement and signature.

(Signed) LORENZO SAWYER,
Circuit Judge.

SEPTEMBER 17, 1877.

(Endorsed:) Filed September 17, 1877. L. S. B. Sawyer, clerk, by J. F. O'Beirne, deputy clerk.

60 *Stipulation as to complaint.—Answer and transcript on writ of error.*

In the United States circuit court, district of California.

ISAAC W. LORD, PLAINTIFF,
vs.
GOODALL, NELSON & PERKINS STEAMSHIP CO., defendant.

It is hereby stipulated that the complaint herein contains forty-six counts, all in precisely the same form and containing the same allegations, to recover for losses suffered by that many different shippers for goods shipped by them on the steamship Ventura on April 20th, 1875.

The goods, as described in the complaint, are of the usual kinds sold by merchants and tradesmen, and are alleged in said complaint to have been shipped on said steamship from San Francisco, and the
61 names of the shippers, the alleged value of the goods alleged in said complaint to have been lost by them, and their alleged destination, are as follows, viz:

Name of shipper.	Value of goods lost.	Destination of goods.
D. Felsenheld	$2,656 50	San Diego.
A. J. Bradfield	2,300 00	Los Angeles.
S. C. Foy	4,140 00	Los Angeles.
D. Felix	1,380 00	Los Angeles.
Dotter & Bradley	3,036 00	Los Angeles.
Steiner & Klauber	2,719 75	San Diego.
Rivaro & Vignoli	2,150 38	Los Angeles.
Mrs. A. A. Casper	1,406 45	San Diego.
Grange Co operative Company	4,235 56	Los Angeles.
Barrows, Funey & Co	1,354 22	Los Angeles.
L. Lehman	2,119 08	Los Angeles.
D. Wallach	1,391 50	San Diego.
D. Freeman	1,518 00	Los Angeles.
F. Vasselo	92 28	Los Angeles.
Mendel Meyer	552 00	Los Angeles.
W. M. Stoddard	1,046 64	Los Angeles.
Levy & Coblentz	847 22	Los Angeles.
Albert Folke	1,035 00	Los Angeles.
J. Moiso & Co	853 87	Los Angeles.
Eugene Meyer & Co	981 47	Los Angeles.
Hamilton & Marston	206 25	San Diego.
Robert Bailey	379 50	San Diego.
62 Coulter & Harper	115 00	Los Angeles.
M. Whisler	207 77	Los Angeles.
Victor Perret	207 00	Los Angeles.
A. Pauley & Sons	107 38	San Diego.
Chas. A. Chase	293 60	San Diego.
Littleboy & Davis	307 60	Los Angeles.
S. Grand & Co	49 00	Los Angeles.
Lewis Lewin	100 62	Los Angeles.
Dunsmore Bros	337 61	Los Angeles.
Ralph Leon	336 37	Los Angeles.
C. F. Heingewan & Co	345 00	Los Angeles.
A. S. McDonald	213 03	Los Angeles.
Wm. S. Kaney	300 81	Los Angeles.
Theo. Wollweber	193 38	Los Angeles.
C. A. Bonestel & Co	93 43	Los Angeles.
W. A. Bigole	65 92	San Diego.
Samuel Prager	345 00	Los Angeles.
Workman Bros	426 05	Los Angeles.
Edwards & Hoff	12,420 00	Los Angeles.
G. Raffi	259 32	San Diego.
Simon Levi	393 95	San Diego.
V. Gelcich	213 90	Los Angeles.
Willisholfen & Raphel	951 28	Los Angeles.
Palasky & Goodwin	11,730 00	Los Angeles.

The answers to each of the said counts are in precisely the
63 same form with precisely the same denials and the same allegations, except that the answer to the second count in said complaint, that is to say, the answer to the count for the loss suffered by A. J. Bradfield, varies from the answers to the other counts in this, that in addition to the denial and allegations contained in the answers to the other counts, it denies that the journey on which the goods of A. J. Bradfield were being carried when lost was first commenced in California; but, on the contrary, avers that such goods of said Bradfield were, when lost, being carried in unbroken packages on a continuous journey which first commenced in the city of New York, in the State of New York, and was to have ended at the city of Los Angeles, in the State of California.

And it is further stipulated that this suit was in the proper time, by proper procedure, duly removed from the State court to the United
64 States circuit court for the district of California.

It is further stipulated that the record herein accompanying the writ of error to the United States Supreme Court shall, for the purpose of saving an unnecessarily bulky, inconvenient, and costly record, be made up as follows, viz:

1st. The formal commencement and ending of the complaint as a whole, and the first count of such complaint (being for the loss suffered by D. Felsenheld) with endorsement of filing.

2nd. The formal commencement and ending of the answer as a whole, and the answer to the said first count of said complaint with the endorsement of filing.

3rd. The verdict of the jury.

4th. The judgment entered on the verdict.

65 5th. The bill of exceptions with endorsement of filing.

6th. This stipulation with endorsement of filing.

7th. The certificate of the clerk in accordance with this stipulation.

McALLISTER & BERGIN,
Att'ys for Defendants.
J. W. STUMP, S. F. LEIB, AND
MOORE, LAINE & LEIB,
Att'ys for Plaintiff.

(Endorsed:) Filed 17th Sept., 1877. L. S. B. Sawyer, clerk, by J. F. O'Beirne, dep. clerk.

66 *Bond on writ of error.*

In the Supreme Court of the United States.

ISAAC W. LORD, PL'FF IN ERROR,
vs.
GOODALL, NELSON & PERKINS STEAMSHIP COMPANY, def't in error.

Know all men by these presents that we, John S. Carter and Sam'l A. Bishop, of the county of Santa Clara, State of California, are held and firmly bound unto Goodall, Nelson & Perkins Steamship Company, in the sum of one thousand dollars, to be paid to the said Goodall, Nelson & Perkins Steamship Company, its successors and assigns, to which payment well and truly to be made we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and

administrators, firmly by these presents, sealed with our seals'
67 dated this day of September, A. D. 1877.

Whereas the above named Isaac W. Lord hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the circuit court of the United States for the district of California: Now, therefore, the condition of this obligation is such that if the above named Isaac W. Lord shall prosecute his said writ of error to effect and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

J. S. CARTER. [SEAL.]
SAM'L A. BISHOP. [SEAL.]

STATE OF CALIFORNIA,
County of Santa Clara, ss:

68 John S. Carter and Sam'l A. Bishop, the parties above named, being duly sworn, on their oath state, each for himself and not one for the other, that he is worth the sum of one thousand dollars over and above all just debts, exemptions, and liabilities.

J. S. CARTER.
SAM'L A. BISHOP.

Subscribed and sworn to before me this 19th day of September, 1877.
[SEAL.] W. P. VEUVÈ,
Notary Public.

(Endorsed:) Approved this 24th day of September, A. D. 1877. (Signed) Lorenzo Sawyer, circuit judge. Filed September 24th, 1877. L. S. B. Sawyer, clerk, by J. F. O'Beirne, dep. cl'k.

69 I, Lorenzo S. B. Sawyer, clerk of the circuit court of the United States for the district of California, do hereby certify that the foregoing pages numbered, from one to sixty-eight, inclusive, contain full, true, and correct copies of—

1. Portions of complaint.
2. Order changing venue.
3. Amendments to complaint.
4. Stipulation that plaintiff may amend his complaint, etc.
5. Bill of exceptions to order transferring cause to U. S. circuit court.
6. Answer.
7. Verdict.
8. Judgment.

70 9. Opinion.
10. Bill of exception.
11. Stipulation as to complaint, answer, and transcript on writ of error.
12. Bond on writ of error made up in pursuance of the stipulation of the counsel of the respective parties, filed September 17th, 1877, a copy of which is hereto annexed.

Attest my hand, and seal of said circuit court, this third day of October, A. D. 1877.

[SEAL.] L. S. B. SAWYER, *Clerk*,
By J. F. O'BEIRNE,
Dep'y Cl'k.

71 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the district of California, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in said circuit court, before you, between Isaac W. Lord and Goodall, Nelson & Perkins Steamship Company, a manifest error hath happened, to the great damage of the said Isaac W. Lord, as by his complaint appears, and it being fit, that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf; you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court, to be there and then held, that the record and proceedings aforesaid be inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 24th day of September, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the United States the one hundred and second.

Attest:

[SEAL.] L. S. B. SAWYER, *Clerk.*

The above writ of error is hereby allowed.

LORENZO SAWYER,
Circuit Judge.

(Indorsed:) 1694, United States Supreme Court. Isaac W. Lord vs. Goodall, Nelson & Perkins S. S. Co. Writ of error. Filed 24th September, 1877. L. S. B. Sawyer, clerk, by J. F. O'Beirne, d'p'y cl'k.

72 UNITED STATES OF AMERICA, *ss:*

To Goodall, Nelson & Perkins Steamship Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be held at Washington on the second Monday of October, A. D. 1877, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of California, wherein Isaac W. Lord is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the United States, this 24 day of September, A. D. 1877, and of the Independence of the United States, the 102d.

[SEAL.] LORENZO SAWYER,
Circuit Judge.

73 Service of a copy of the within citation is hereby admitted, this Sept. 24th, 1877.

McALLISTERS & BERGIN,
Atty's for Def'ts.

(Indorsed:) 1694. United States Supreme Court. Isaac W. Lord vs. Goodall, Nelson & Perkins Steamship Company. Citation. Filed Sept. 24, 1877. L. S. B. Sawyer, clerk, by J. F. O'Beirne, dep'y cl'k.

(Indorsement on cover:) No. 293. Isaac W. Lord, plaintiff in error, vs. The Goodall, Nelson & Perkins Steamship Company. California C. C. U. S. Filed 13th October, 1877.

No. 293.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

ISAAC W. LORD,

Plaintiff in Error,

VS.

GOODALL, NELSON & PERKINS STEAMSHIP CO.,

Defendant in Error.

BRIEF OF PLAINTIFF IN ERROR.

S. F. LEIB, - Counsel for Plaintiff in Error.

SAN JOSE:
McNeil Bros., Job, Book and Law Printers, Knox Block.
1880.

IN THE SUPREME COURT

OF THE

UNITED STATES.

ISAAC W. LORD,
Plaintiff in Error,

vs.

GOODALL, NELSON & PERKINS STEAM-SHIP COMPANY,
Defendant in Error.

PLAINTIFF'S BRIEF.

Statement of Case.

This action was originally brought in the District Court of the State of California, at Los Angeles, but was, on application of defendant, removed to the District Court of the State of California at San Francisco. While there an amendment was filed to the complaint, (Trans. of Record, Fol. 9,) and thereafter, on defendant's application, the cause was removed to the Circuit Court of the United States for California.

The action is for goods lost, amounting to near $60,000, and arose as follows: Various merchants

in Los Angeles and San Diego were shipping their goods for their Spring trade from San Francisco on defendant's steamship "Ventura." This steamship was engaged exclusively in running between San Francisco, Cal., and San Diego, Cal., and intermediate ports. The goods lost (with possibly the exception of Bradfield's) all were first started on their journey from a point in California, (San Francisco), and their final destination was a point in the same State (Los Angeles or San Diego.) As to Bradfield's goods, they were shipped from the Eastern States to San Francisco, Bradfield not knowing then where he would settle. Before the goods arrived, however, he concluded to settle in Los Angeles, and when they arrived in San Francisco he re-shipped them to Los Angeles. The different owners of these goods lost, assigned their claims to plaintiff, who brought suit thereon. It should be here mentioned, as the whole case was made to turn on this point in the Court below, that every trip the "Ventura" made, including the one in question, she carried goods destined to or from other States. The proportion which such goods bore to the other goods above mentioned, is not stated by the record, but would make no difference to this case. It will probably not be urged, however, that such proportion was other than very slight. No part of the

goods lost, for which this suit is brought, (unless Bradfield's be an exception), were engaged in interstate commerce at the time of the loss.

The defendant pleaded Sec. 4283 of the Revised Statutes of the United States as a defence.

That Section provides that no ship-owner shall be liable for his servants' negligence beyond the value of the ship itself. In this case the ship was a total loss.

The manner of the loss and the way our exceptions arose is best stated by the record itself. I quote from the bill of exceptions, (Tras., page 17.) "The steamship 'Ventura,' while pursuing her said voyage, under command of a master employed for that purpose, on the said April 20th, 1875, at 15 minutes after 8 o'clock P. M. of that day, while running under a full head of steam at ten knots an hour, in thick fog on a smooth sea, ran upon (erroneously printed "from" in transcript) Point Sur, on the coast of California, a few miles below Monterey Bay, whereby such steamship and all the cargo aforesaid were totally lost."

See also Judges' opinion to same effect, page 10 of Transcript.

This shows the loss to have happened through the gross negligence of defendant or its servants.

The bill of exceptions further continues:

"The defendant contended that if the jury believed that the loss happened solely by reason of the negligence of the master of said steamship on such voyage, and there was no fault or negligence of any kind on the part of defendant in selecting or employing said master, that it was not responsible for any such loss, but was exonerated from liability under Section 4283 of the Revised Statutes of the United States, and requested the Court to instruct accordingly.

"The plaintiff contended that the statute had no application in this case to such losses as were for goods, which, when lost, were being transported on a journey which first commenced in the State of California, and was to have ended in the same State, without extending to any other State, or country, or Indian tribe, and requested the Court to instruct the jury as follows, viz:

"The Revised Statutes of the United States, pleaded by the defendant and relied on by it on the trial, afford no defence to this action as to the losses sued for, other than the loss of A. J. Bradfield.

"But the Court refused to give such instruction, to which refusal the plaintiff through his attorneys then and there duly excepted.

"The Court thereupon, on the same day, to-wit, on August 31st, 1877, instructed the jury that if the jury believed that the said losses occurred solely by reason of the negligence of the master of said ship, and without the privity, or knowledge, or neglect, of said defendant, that Section 4283 of said Revised Statutes fully exonerated the defendant from liability for any of such losses, not-

withstanding the goods so lost were being transported on a journey when lost, the final termini of which were different points in the State of California. To which instruction the plaintiff, through his attorneys, then and there duly excepted.

"The jury then retired, and thereafter brought in a verdict for defendant."

Judgment was rendered thereon for defendant, and plaintiff brings the case here on writ of error.

Assignments of Error and Prayer for Reversal of Judgment.

And now comes the plaintiff in error above named before the Justices of the Supreme Court of the United States, and says that in the records and proceedings aforesaid, there is manifest error in this, to-wit:

1st. The Court below erred in refusing to give to the jury the instructions asked for plaintiff, viz: The Revised Statutes of the United States, pleaded by defendant and relied on by it on the trial, afford no defence to this action as to the losses sued for, other than the loss of A. J. Bradfield.

2d. The Court below erred in instructing the jury "that if the jury believed that the said losses occurred solely by reason of the negligence of the

master of said ship, and without the privity, or knowledge, or neglect of said defendant, that Section 4283 of said Revised Statutes fully exonerated the defendant from liability for any of such losses, notwithstanding the goods so lost were being transported on a journey when lost, the final termini of which were different points in the State of California."

3d. The Court erred in holding that Congress could, or intended to, regulate commerce which did not extend to any other State than California, and which did not extend to any foreign country or Indian tribe.

Wherefore the said plaintiff in error prays that the judgment aforesaid be reversed, with costs.

Argument of Plaintiff in Error.

The "commerce clause" of the Federal Constitution gives Congress the power:

"To regulate commerce with foreign nations, and among the several States, and with the Indian tribes."

It was conceded all around in the Court below, both by Court and counsel, that the goods lost, for which suit is brought in this case, were not engaged in foreign commerce, or commerce among

the several States, or commerce with Indian tribes, but were a part of the purely domestic or internal commerce of the State of California, and that no other State or country, and no Indian tribe, was in any way affected thereby.

The Court will perceive that the single question which this case presents is, whether Congress in passing Section 4283 of the Revised Statutes intended it to apply to the purely internal commerce of a State. And as that Section is general in its terms, it is to be answered by the further question, Has Congress power, under the "commerce clause" in the Federal Constitution, to regulate the purely internal commerce of a State, because forsooth, it is being carried on upon a ship, canal boat, railroad car, stage, or other vehicle, on which there may be a few goods destined to or from another State, country or Indian tribe, even to absolving the common carrier from all liability whatever; not only to absolve him from liability as to the particular vehicle, by forbidding it being taken on execution to satisfy a judgment for such loss, but to exonerate him from any judgment at all? If the question can be answered in the affirmative, then it can not be denied, and I painfully concede that there is nothing left of our States but the name.

Before discussing this question, it is well to pave our way to that point.

I therefore announce the following propositions:

First. The Federal Constitution is a grant of power to the Federal Government, and a restriction of power upon a State. A State Constitution is a restriction of power upon the State. Hence the Federal Government can do nothing except where it can put its finger on some provision of the Federal Constitution which expressly or by necessary implication gives it the power to do the act in question; whereas a State can do any act not inconsistent with the Federal Constitution, a valid Federal statute or treaty, or its own Constitution. Since I heard this axiom in the lecture room from the lips of that great jurist and teacher, Judge Cooley, I have not heard it disputed.

Therefore, if it is sought to construe Section 4283 of the Revised Statutes of the United States as applying to the purely domestic commerce of a State, some clause in the Federal Constitution must be pointed out which expressly or by necessary implication gives Congress that power.

Gilman vs. Philadelphia, 3 Wall., 725.

The License Cases, 5 How., 588.

Sharpless vs. Mayor, etc., 21 Penn. St., 160.

In the Gilman case, 3 Wall., it is said:

"The national Government possesses no powers but such as have been delegated to it."

In the License cases, 5 How., it is said:

"The Federal Government is supreme in the exercise of the powers delegated to it, but beyond this its acts are unconstitutional and void."

The Penn. case, 21 Penn. St., says:

"The Federal Government can do nothing but what is authorized expressly or by clear implication."

Second. The only clause of the Federal Constitution pointed out by either Court or counsel below in justification of Sec. 4283, was the "commerce clause" above quoted. And it is clear, from the authorities, that it was under that clause that it was passed.

Moore vs. Am. Trans. Co., 24 How., 37, 39, and 40.

Norwich vs. Wright, 13 Wall., 117, 121.

Third. Congress could not justify itself in passing this section under the "admirality clause." The "admirality clause" does not pretend to confer any power on Congress whatever, but confines itself exclusively to conferring certain powers upon the Courts. The "admirality clause" and the "commerce clause" are two entirely separate, distinct and independent grants of power, referring to entirely distinct and independent departments of government, and the breadth of one clause in no way determines the breadth of the other.

The "Genesee Chief," 12 How., 452.

The "Belfast," 7 Wall., 640.

In the "Genesee Chief," 12 How., the Court says:

"Nor can the jurisdiction of the Courts of the United States be made to depend on regulations of commerce. They are entirely distinct things, having no necessary connection with one another, and are conferred in the Constitution by separate and distinct grants."

So in the case of the "Belfast." In 7 Wall., it is said:

"Difficulties attend every attempt to define the exact limits of admiralty jurisdiction, but it can not be made to depend upon the power of Congress to regulate commerce, as conferred by the Constitution. They are entirely distinct things, having no necessary connection with one another, and are conferred in the Constitution by separate and distinct grants."

It was first held by this Court that tide waters determined the admiralty jurisdiction.

The "Thomas Jefferson," 10 Wheat., 428.

The steamboat "Orleans" vs. "Phœbus," 11 Pet., 175.

This was overruled, and navigable waters, whether tide or otherwise, were held to determine the admiralty jurisdiction.

The "Genesee Chief," 12 How., 457.

Although it was still held that the admiralty

jurisdiction did not extend where the commercial power of Congress did not, and that, therefore, there was no admirality jurisdiction as to goods going on ships from one port to another in the same State.

Allen vs. Newberry, 21 How., 244.

But even this restriction was overturned, and it was held that, though Congress had no power to regulate the commerce in goods over navigable waters between ports of the same State, yet the admirality clause gave the Courts power to enforce payment for the loss of such goods.

The "Belfast," 7 Wall., 640–41.

Fourth. Although the language of Section 4283 is general, yet if it could only constitutionally apply to commerce with foreign nations, among the several States or with Indian tribes, it will be construed that Congress did not intend it to have any broader operation.

Aldrich vs. Wright, 16 Am., 341.

The "Seneca," 1 Biss., 371.

United States vs. Dewitt, 9 Wall., 41.

In the Aldrich case, 16 Am., it was said:

"And the statute is held valid by giving it a construction compatible with the Constitution, making it applicable only to those cases to which it can be constitutionally applied."

Also in the "Seneca" case precisely the same principle was announced, where it was held that, although the language of the boiler inspection laws of the United States was general in its terms, (as is the case with Sec. 4283 here), yet as Congress could not constitutionally require the boiler of a vessel engaged in purely domestic commerce to be inspected, such laws should be construed as only intending to apply to vessels engaged in inter-state or foreign commerce.

To the same effect is United States vs. Dewitt, 9 Wall., 4.

I.

This Court has held, first, last, and all the time, that Congress could not, under any express or incidental power, directly or incidentally, to any extent or in any manner, regulate the purely domestic commerce of a State.

Gibbons vs. Ogden, 9 Wheat., 194–95.
The License cases, 5 How., 574, 575, 582.
The Passenger cases, 7 How., 400.
Allen vs. Newberry, 21 How., 245–47.
Maguire vs. Card, 21 How., 250.
Sinnot vs. Davenport, 22 How., 243.
Moore vs. Am. Trans. Co., 24 How., 37, 39, 40.

United States vs. Holliday, 3 Wall., 418.
License tax cases, 5 Wall., 470.
Steamship Co. vs. Port Wardens, 6 Wall., 33.
Woodruff vs. Parkham, 8 Wall., 140.
United States vs. Dewitt, 9 Wall., 43, 44, 45.
The "Daniel Ball," 10 Wall., 564–65.
State Tonnage Tax cases, 12 Wall., 214.
State Freight Tax, 15 Wall., 277.
Peete vs. Morgan, 19 Wall., 584.

And see also to same effect:

The "Seneca," 1 Biss., 371.
The "Mary Washington," 1 Ab., C.C., Rep. 1.
The "James Morrison," 1 Newb., 241.
The Tug, "Oconto," 5 Biss., 463, and cases cited.
Sears vs. The Board, etc., 36 Ind., 270–72.
Navigation Co. vs. Dwyer, 29 Tex., 382–83.
Story on Const., Sec. 1061.

In Gibbon vs. Ogden, 9 Wheat., it is said:

"It is not intended to say that these words (the commerce clause) comprehend that commerce which is completely internal, which is carried on between man and man in a State or between different parts of the same State, and which does not extend to or affect other States. Such a power would be inconvenient, and is certainly unnecessary.

"Comprehensive as the word "among" is, it may very properly be restricted to that commerce which concerns more States than one.

"The phrase is not one which would probably have been selected to indicate the completely interior traffic of a State, because it is not an apt phrase for that purpose; and the enumeration of the particular classes of commerce to which the power was to be extended would not have been made had the intention been to extend the power to every description. The enumeration presupposes something not enumerated; and that something, if we regard the language or the subject of the sentence, must be the exclusively internal commerce of a State. The genius and character of the whole Government seems to be that its action is to be applied to all the external concerns of the nation, and to those internal concerns which affect the States generally; but not to those which are completely within a particular State, which do not affect other States, and with which it is not necessary to interfere for the purpose of executing some of the general powers of the Government. The completely internal commerce of the State, then, may be considered as reserved for the State itself."

In the License cases, 5 How., on page 574 it is said:

"It is equally clear that the power of Congress over this subject does not extend further than the regulation of commerce with foreign nations and among the several States; and beyond these limits the States have never surrendered their power over trade and commerce, and may still exercise it, free

from any controlling power on the part of the general Government. Every State, therefore, may regulate its own internal traffic, according to its own judgment, and upon its own views of the interest and well being of its citizens."

Again, on page 575, it is said:

"And internal or domestic commerce, which belongs to the States and over which Congress can exercise no control."

In the Passenger cases, 7 How., it was said:

"All commercial action within the limits of a State, and which does not extend to any other State or foreign country, is exclusively under State regulation. Congress has no more control over this than a State has to regulate commerce with foreign nations and among the several States."

In Allen vs. Newberry, and Maguire vs. Card, 21 How., it is distinctly held that the "commerce clause" of the Constitution could not cover the case where goods were shipped from the port of one State to another port of the same State, although being carried on a ship plying between different States.

In Sinnot vs. Davenport, 22 How., it is said:

"The power of Congress, however, over the subject, does not extend further than the regulation of commerce with foreign nations and among the several States. Beyond these limits they have

not surrendered their power over the subject, and may exercise it independently of any control or interference of the general Government."

In the case of Moore vs. Am. Trans. Co., 24 How., the precise statute now under discussion was then under consideration. On page 37 it is said:

"But the business upon the great lakes lying upon our northern frontiers, carried on between the States or with the foreign nations with which they are connected, (and this is the only business which Congress can regulate or with which we are dealing), is of a very different character."

Again on same page it is said:

"The act can apply to vessels only which are engaged in foreign commerce, and commerce between the States. The purely internal commerce and navigation of a State is exclusively under State regulation."

In United States vs. Holliday, 3 Wall., it is said:

"It is not, however, intended by these remarks to imply that this clause of the Constitution authorized Congress to regulate any other commerce originated and ended within the limits of a single State than commerce with Indian tribes."

In License Tax cases, 5 Wall., it is said:

"But very different considerations apply to the internal commerce or domestic trade of a State. Over this commerce and trade Congress has no direct control. This power belongs exclusively to the States. No interference by Congress with the

business of citizens transacted within a State is warranted by the Constitution, except such as is strictly incidental to the exercise of powers clearly granted to the Legislature."

In Steamship Co. vs. Port Wardens, 6 Wall., it is said:

"And some other powers, the exercise of which may in some degree affect commerce, have always been held not to be within the grant to Congress. To this class it is settled belong * * * laws regulating the internal trade of a State."

In Woodruff vs. Parkham, 8 Wall., it was held that the State law was valid, as it did not attempt to fetter inter-state commerce, but applied to domestic and foreign commerce alike.

In United States vs. Dewitt, 9 Wall., it is said:

"The questions certified resolve themselves into this: Has Congress power under the Constitution, to prohibit trade within the limits of a State? That Congress has power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes, the Constitution expressly declares. But this express grant of power to regulate commerce among the States has always been understood as limited by its terms, and as a virtual denial of any power to interfere with the internal trade and business of the separate States. * * * As a police regulation, relating exclusively to the internal trade of a State, it can only have effect when the legislative authority of Congress excludes territorially all State legislation, as for example, in the District of Columbia.

the State of California; that Congress got no power from the Constitution to deal with this domestic commerce; but attempted to overturn all this long line of decisions, and give Congress a power which it never dreamed it possessed, or thought of exercising, by claiming that as this domestic commerce was being carried upon a vessel which Congress could regulate, therefore we, poor humble private individuals, gave Congress the power to regulate this commerce, which the Constitution of the United States itself did not give it.

To this there are several answers:

First. I had supposed it to be well settled that even express consent could not confer jurisdiction either upon a legislative or a judicial body.

Second. Congress could not, by voluntarily linking that which was within her power with that which was not, make both valid. That was decided by the case of the State Freight Tax cases, 15 Wall., just noticed.

Also in United States vs. Steffens, hereinafter mentioned.

Third. In no case could we be deemed to have consented to anything more than that Congress should regulate that vessel. We have always been willing that it should do so, to its heart's

content. Congress could give us our pro rata of the proceeds of that vessel, or none at all, if it saw fit. What its power in that regard would be, I do not know. It can not arise in this class of cases. We never made a claim against the vessel, and claim nothing against it now. We have sued defendant upon its general liability, and expect to get a general and personal judgment which will have no possible connection with this "much regulated vessel."

Fourth. As before indicated, we may assume that Congress could deal with the ship itself, or with our claims, so far as we sought to enforce them against the ship, in any way it pleases. But we are not dealing with the ship, nor claiming anything against it. This puts that question entirely out of sight. We especially call the Court's attention to this fact: That this is not a suit against the ship; that we make no claim to or against the ship, but rely solely upon the personal, general, common law liability of the defendant, as a common carrier.

Fifth. Our suit can in no possible way affect inter-state commerce, foreign commerce or commerce with the Indian tribes. Nor can it possibly affect the vessel which was under the regulation of Congress. From what constitutional provision,

then, does Congress get the right to forbid this action?

Sixth. The right to regulate a vehicle or agency of commerce, and the right to regulate the commerce which is carried on upon that vehicle, are two separate things. If Congress can say, "no losses for domestic commerce of a State occurring upon a vehicle engaged in inter-state commerce shall be enforced beyond the value of the vehicle itself," it can say that such losses shall not be enforced at all; and this would obliterate the whole responsibility of common carriers, for there is not a common carrier in the land whose vehicles of commerce are not, to some extent, engaged in inter-state commerce.

Nay, it would be far worse than that, for if all commerce could be regulated in this way, by Congress, it could be regulated in every way by it by a little skillful legislation, linking and grouping all commerce together. And when you have extracted from State control all its domestic commerce, there is but little of the State left. State regulation of local freights and fares, and the like, all would go by the board.

III.

It was never the intention to give Congress power over domestic commerce. The motive in

inserting a provision in the Constitution giving to Congress the power to regulate commerce, was to place foreign commerce, or inter-state commerce "beyond interruption or embarrassment of conflicting or hostile State legislation."

Steamship Co. vs. Port Wardens, 6 Wall., 33.
Case of State Freight Tax, 15 Wall., 275.
Railroad Co. vs. Richmond, 19 Wall., 581.
Welton vs. State of Mo., 1 Otto, (91 U. S.) 280.
Brown vs. Maryland, 12 Wheat., 446.
Gibbons vs. Ogden, 9 Wheat., 195.

In Steamship Co. vs. Port Wardens, 6 Wall., it is said:

"And it [power of Congress over Commerce] was thus given, so far as it relates to commerce between the States, with the obvious intent to place that commerce beyond interruption or embarrassments arising from the conflicting or hostile State regulations."

In case of State Freight Tax, 15 Wall., it is said:

"And probably the transportation of articles of trade from one State to another was the prominent idea in the minds of the framers of the Constitution, when to Congress was committed the power to regulate commerce among the several States. A power to prevent embarrassing restrictions by any State was the thing desired. The

power was given in the same words and in the same clause by which was conferred power to regulate commerce with foreign nations."

In R. R. Co. vs. Richmond, 19 Wall., it is said:

"The power to regulate commerce among the several States was vested in Congress in order to secure equality and freedom in commercial intercourse against discriminating State legislation."

In Welton vs. Mo., 1 Otto, it is said:

"The very object of investing this power in the general Government was to insure this uniformity against discriminating State legislation."

In Gibbons vs. Ogden, 9 Wheat., and Brown vs. Maryland, 12 Wheat., the same idea is clearly shadowed forth.

This being the object of the "commerce clause" in the Constitution, with what force or grace can it be twisted to apply to such a case as that at bar?

IV.

It was suggested, though discarded by the Court below, that possibly Congress might have power to make Section 4283 apply to domestic commerce, as that would tend to encourage and promote interstate commerce. I don't see how that result would follow, as a fact, but if it did, we respectfully suggest in reply that the Federal Constitution does not give Congress power to deal with

domestic commerce whenever it thinks it can promote inter-state or foreign commerce thereby. Not having done so, Congress can not deal with it on that ground. If it could, there are many other things it could deal with on the same principle. For instance, it could regulate domestic commerce in all its branches; it could provide that all property of ship owners, of whatever nature or kind, should be exempt from taxation; that each State should give every ship owner a subsidy as each ship left port; that the State should pay for all lost ships; that ship owners should not be liable for jury or militia duty; that all agricultural and manufacturing operations should be carried on as Congress should direct; that no crops should be raised or articles manufactured except such as were to be exported; that no food should be eaten or articles used or apparel worn except such as were imported; and so on, *ad infinitum*. These things would doubtless greatly promote inter-state commerce, and encourage ship builders; but would such laws be constitutional?

V.

The case of Hall vs. De Cuir, 5 Otto, 485, has been called to my attention by my opponent, as operating against my views. I am unable to see in what particular. That case went off on the ex-

press grounds that the defendant could not successfully carry on a commerce with white passengers from one State to another, if one of the States were allowed to dictate where the way passengers "of color" were to be placed. There the State, by its affirmative action, would impair, propably destroy, the inter-state commerce carried on by defendant. No one will contend that this could be done.

VI.

The very recent case decided in this Court at this term, of the "United States vs. Steffens," (the "trade mark" decision), seems to me is decisive of this case. There the principles I have urged are crystalized, and stated with great force. The case has been so recently decided that it does not require to be re-stated by me. Suffice it to say that the case plainly holds that Congress can not link domestic commerce with inter-state commerce, and have the law valid. Not only did the Court hold that the trade mark law of Congress was void, in so far as it attempted to regulate domestic commerce, but as it could not be determined that the good would have been passed without the bad, the whole law was allowed to fall, rather than uphold the power of Congress to regulate domestic commerce.

VII.

If I comprehend the case at bar aright, the decision to be given herein will have a much greater significance than the mere dollars and cents involved. Notwithstanding the considerable amount at stake, I feel a far greater interest in the case, as a citizen, than as a mere attorney.

A few years ago the nation was in danger. It has seemed to me for years past that it is the States that are now in danger. Whether the danger to the latter is the result of the flush of victory in saving the former, I know not. But of this I feel certain: Those who saved the nation never dreamed that the result of success would be to emasculate the States of all power. The one was no dearer, and would not be defended more strenuously, than the other.

To me it seems there should be no conflict between the two. Let each be sovereign in its sphere. Let us take Marshall as our guide, while dealing with this very question: "The genius and character of the whole Government seems to be that its action is to be applied to all the external concerns of the nation and to those internal concerns which affect the States generally; but not to those which are completely within a particular State, which do not affect other States, and

with which it is not necessary to interfere, for the purpose of executing some of the general powers of the Government."

Gibbons vs. Ogden, 9 Wheat., 195.

We confidently ask for a reversal of the judgment in this case.

Respectfully submitted.

S. F. LEIB,

Counsel for Plaintiff in Error.

No. 37.

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1880.

ISAAC W. LORD,
Plaintiff in Error.

vs.

GOODALL, NELSON AND PERKINS STEAMSHIP CO.,
Defendant in Error.

BRIEF FOR PLAINTIFF IN ERROR.

C. A. KENT,
Counsel for Plaintiff in Error.

DETROIT:
POST AND TRIBUNE JOB PRINTING CO., PRINTERS, BINDERS, ETC.
1880.

SUPREME COURT

OF THE UNITED STATES.

OCTOBER TERM, 1880—No. 37.

ISAAC W. LORD,
Plaintiff in Error,

vs.

GOODALL, NELSON & PERKINS STEAMSHIP CO.
Defendants in Error.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

The action is brought to recover the value of goods shipped from San Francisco, California, to Los Angelos and San Diego, ports of the same State, by the steamer Ventura. This ship carried, on every trip, goods sent from other States to some place in California, or goods shipped from some port at which she touched in California to other States, but she ran only between ports of the same State. The vessel and all the cargo was lost by running on a point of land, and, as is claimed, through the negligence of her officers. The suit is a personal one brought against the owners of the vessel.

The Judge of the Court below charged that the provisions of section 4283 of the Revised Statutes of the United States exempted the owners of the vessel from all liability for damages, which occurred through the negligence of the master and without the knowledge or privity of the owner, The correctness of this charge is the only question in the case. Plaintiff in error contends that said section, if construed to extend to this case, is so far unconstitutional and void. It will not be disputed that, except for this statute, the charge would be erroneous, nor that the statute can be valid only so far as it is based on some provision of the Constitution of the United States. Only two provisions of the Constitution can be claimed as the basis of this Statute—the "Admiralty clause" and the "Commerce clause."

I.

The application of the statute in question in the case at bar cannot be supported under the "Admiralty clause."

This clause is part of the section defining the jurisdiction of the United States Courts, which reads thus: "The judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States and treaties made, or which shall be made, under their authority, to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction, to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; be-

tween citizens of the same State claiming lands under grants of different States; and between a State or the citizens thereof and foreign states, citizens or subjects."

It is plain that this section is not intended to enlarge the law-making power of Congress. If it were, laws might be passed by the national legislature which would determine the rights of the parties in all suits between citizens of different States, or between citizens of the same State claiming under grants from different States, etc.

The object of the section is to confer upon the United States judiciary the power to decide controversies between the parties named, leaving the laws by which these controversies are to be determined to be sought elsewhere.

No case can be found in which this Court has based the validity of any act of Congress upon the provision defining the jurisdiction of the judiciary.

If an act of Congress could be supported by the provision of the Constitution under consideration, it, and not the "Commerce clause," would have been made the foundation of the judgment in the case of the Daniel Ball, 10 Wallace, 557, and in Hall vs. DeCarr, 95 U. S., 485.

The fact then that the Ventura was, when lost, sailing in the navigable waters of the United States, and so clearly within the admiralty jurisdiction, is no reason why the United States law should determine the construction of the contract between the shippers and the owners of the vessel.

The case does not differ from what it would have been had the contract been for a conveyance of the goods by land.

II.

Nor can the application of the statute under consideration to the case at bar be supported under the provision of the Constitution which gives Congress power "to regulate commerce with foreign nations, and among the several States, and with the Indian tribes."

The cases cited in the brief of my associate, p. 14 and seq., abundantly show that this provision forbids Congress to exercise any control over the purely internal commerce of any State.

And surely the conveyance of goods from one place to another in the same State is internal commerce, if there be any such thing. And Congress is forbidden to attempt to regulate any such commerce. It is left entirely to the respective States to determine the law governing it. The Court below then erred in looking at all to the act of Congress to find a law to regulate the rights of the parties to this suit. It should have looked to the law of California alone.

III.

The application of the statute to the case at bar cannot be sustained on the ground that it is essential to the regulation of that commerce which is under the control of Congress.

So far as the Ventura was engaged in commerce among the States she was subject to United States law, and all who used her for such commerce may well have

their contracts determined by the same law. But the United States law as to these questions can be fully administered without affecting in the least persons engaged in purely State commerce. The United States law and the law of California can control their respective objects without the least conflict. The full administration of the one will not affect the other. I do not see how the United States law can affect the liability of the vessel for the breach of contracts in reference to purely State commerce, but, at any rate, it cannot affect personal contracts of the owner of the vessel in reference to such commerce.

It may be objected that the boat and its owners will be subject to different degrees of liability, according to the different kinds of commerce in which they are engaged, and that this will be unjust.

Whether unjust or not, the possibility of such different degrees of liability is inherent in the complex system of our government, by which the supreme power of the nation is divided between the United States and each separate State. Not a few cases have already arisen in which the United States Courts sitting in a State have confessedly administered a different rule of law from that which the highest courts of the State would have applied to the same case, and this difference has arisen from different constructions of like contracts, and not, as in the case at bar, from the existence of contracts essentially different.

The decision of the Court below on the point under consideration is based upon two grounds. 1. That a party sending freight by a vessel like the Ventura gets the benefit of United States regulations, increasing the safety of the cargo, and therefore must submit to the limitation of liability provided by the same law; and 2.

that it would be impracticable for two sovereignties to regulate the same instrument used at the same time in different branches of commerce.

The first reason seems most extraordinary. If sound, the United States can regulate purely State commerce as it pleases, if only it gives the shipper compensation for any old rights it may take away. Surely the power of Congress to regulate State commerce cannot depend upon the justice or excellence of the laws it makes. It may be that the shipper is better off under United States regulations than under those of his own State, but that is no answer to a plea of want of power. Constitutions cannot be evaded in this way.

The fact stated in the second reason may be true, but it has no pertinency to the case. It may be that the regulations of Congress as to the means of safety of the boat, etc., are inconsistent with regulations of the same subject by the State, but certainly there is no inconsistency in supposing that the boat, and still more the owners may be under different degrees of liability to different shippers, according as they are engaged in state or inter-state commerce. Different express contracts may be made with different shippers, and so may different implied contracts. Nor do I see that a court of admiralty in a proceeding *in rem.* would have the least difficulty in holding the vessel under one degree of responsibility for state commerce and under another for inter-state and foreign commerce. And surely the owners of a ship may be adjudged to have different degrees of liability on different contracts without the least inconvenience.

The decisions which have been thought to bear most upon the point in question are the Daniel Ball, 10 Wallace, 57, and Hall vs. DeCarr, 95 U. S., 485.

The first case holds that a vessel sailing in the navigable waters of the United States and carrying freight, destined, in fact, for other States, is subject to inspection and license under United States laws, though her trips are confined to ports of the same State. This decision bears upon the case at bar only in showing that the Ventura was subject to like laws of inspection and license, a point conceded.

The second case decides that a statute of Louisiana, regulating a vessel engaged in both inter-state and state commerce is void, because the state commerce could not be thus regulated, without interfering with the inter-state commerce, a subject beyond State power. The most that defendant in error can justly claim from this decision is that a law of the United States regulating inter-state and foreign commerce is valid, though in its necessary operation it incidentally affects state commerce. I do not quarrel with this principle. I say that section 4283 of the revised statutes of the United States can have the fullest operation in controlling the inter-state and foreign commerce for which it was designed, without interfering in the least with the claim of plaintiff. The State law on which plaintiff's claim is based, and the United States law can each operate on the commerce it is designed to reach without the least interference.

I submit that the judgment of the Court below must be reversed, and a new trial ordered.

C. A. KENT,
Of Counsel for Plaintiff in Error.

SUPREME COURT U.S.
FILED
APR 27 1900
D. W. MIDDLETON, Clerk.

SUPREME COURT OF THE UNITED STATES.

No. 293.

ISAAC W. LORD,

Plaintiff in Error,

against

THE GOODALL, NELSON & PERKINS STEAMSHIP COMPANY,

Defendant in Error.

BRIEF FOR DEFENDANT IN ERROR.

JOHN E. WARD,
Counsel for Defendant in Error,
61 Wall Street, New York.

Supreme Court of the United States.

ISAAC W. LORD,
Plaintiff in Error,

against

THE GOODALL, NELSON & PERKINS STEAMSHIP COMPANY,
Defendant in Error.

No. 293.

BRIEF OF DEFENDANT IN ERROR.

Statement of Case.

This action was brought by the plaintiff in the court below (the plaintiff in error before this court) against the defendant, a corporation created by and existing under the laws of the State of California, and the owner of the steamship *Ventura*, of about eight hundred tons burden, running regularly upon the Pacific Ocean as a passenger and freight ship, between the ports of San Francisco and San Diego, touching at intermediate ports; the ports between which she was plying being some five hundred miles apart, and, together with all the intermediate ports, situated within the State of California, but being part of a line by which passengers with through tickets, and goods upon through bills of lading, passed from Texas, Arizona, and New Mexico to other states through California.

The object of the action was to recover the value of goods shipped on board the *Ventura*, to be transported from San Francisco to Los Angeles and San Diego. The said ship, while pursuing her voyage,

ran upon Point Sur, on the coast of California, a few miles below Monterey Bay, and both ship and cargo were totally lost. The defense to the action is that the accident occurred without the privity or knowledge of the owner of the steamer, and there being a total loss, the defendant is exonerated from liability under section 4,283 of the Revised Statutes, which reads as follows: "The liability of the owner of any vessel for any embezzlement, loss or destruction by any person of any property, goods or merchandise shipped or put on board of such vessel, or for any loss, damage or injury by collision, or for any act, matter or thing lost, damage or forfeiture, done, occasioned or incurred, without the privity or knowledge of such owner or owners, shall in no case exceed the amount or value of the interest of such owner in such vessel and her freight then pending."

The plaintiff, at the trial, asked the court to instruct the jury that such statute had no application to such losses as were for goods which, when lost, were being transported on a journey which first commenced in the State of California and was to have ended in the same State, without extending to any other State or country or Indian tribe. The court refused to give such instruction, and the jury found for the defendant. The plaintiff, through his attorneys, excepted to such refusal, and the only question presented to this court by the record is the refusal of the judge to give the charge as requested.

While the statute itself does not contain the limitations asked for by the plaintiff, it is contended that such limitations are fixed by the Constitution of the United States, because, under the section of the Constitution giving the power to Congress to regulate commerce, the power is not given to regulate the internal commerce of a State, and the elaborate brief of the plaintiff in error discusses at length this question, and cites a number of authorities, all tending to establish the doctrine that Congress possesses no such power.

The plain and simple answer to all of which is, that, in passing the statute, Congress intended to exercise no such power, and no such power is invoked to protect the defendant in this case.

The section itself is as entirely free from any political significance as any other act in the statute book.

Congress had, in several previous acts, provided for the better security of the lives of passengers and the safety of merchandise,

to be transported by steamships and other vessels, by making requirements unknown to the common law, and had enforced the performance of those requirements by fines and forfeitures and penalties, civil and criminal. As a counterpoise to such requirements this act was passed, limiting the personal liability of the owner, in the language of this court, "to encourage ship building, and to induce capitalists to invest money in this branch of industry."

Norwich Co. *v.* Wright, 13 Wallace, 121.

The subject over which Congress was legislating was an instrument of commerce, and strictly within the regulating power of Congress.

The contract between the plaintiff and the defendant was purely maritime. Over all such subjects the jurisdiction of the United States Courts, and the power of Congress to legislate, has never been doubted.

To restrict the power of Congress to legislate upon the subject of commerce and navigation only between ports in different States, would, in the language of this court, in the case of the *Belfast*, 7 Wallace, 641, "produce incalcuable mischief, as vessels are often obliged, in the course of the voyage from one port in a State to another port in the same State, to go outside of any particular State, and more than half the voyage is necessarily upon the high seas."

In the case now before the court, almost the entire voyage was upon the Pacific Ocean.

Commerce necessarily includes navigation, and the power to regulate commerce comprehends the control for that purpose, and to the extent necessary, of all the navigable waters of the United States, which are accessible from a State other than those in which they lie. For this purpose they are the public property of the nation, and subject to all the necessary legislation by Congress.

Gilman *v.* Philadelphia, 3 Wall., 724, 725.
South Carolina *v.* Georgia, 3 Otto, 4 and 10.
Hall *v.* De Cuir, 5 Otto, 485–506.

The power of Congress to legislate over transportation on the navigable waters of the United States cannot be confounded with

the power of Congress over inter-state commerce, when carried on by land transportation.

The *Daniel Ball*, 10 Wall., 566.

The vessel transporting these goods being a steamship of eight hundred tons burden, could, of course, carry no goods except upon the ocean, or in navigable waters.

When the plaintiff concedes, as he does in his brief, the right of the United States to regulate by law the ship in which these goods were being transported, and that the ship was subject to such regulations, the whole controversy is ended.

The contract is made for the transportation of the plaintiff's goods in a vessel or ship regulated by the laws of the United States, under the jurisdiction of its courts, and subject to all the penalties and forfeitures inflicted by those laws; as a necessary consequence the limit of liability created by those laws must follow.

There was no error in the refusal of the judge to give the charge as requested by the plaintiff, and the judgment should be affirmed.

JOHN E. WARD,
Of Counsel.